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# **Addressing Offending Behaviour**

**Context, practice and values**

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**Edited by**

**Simon Green, Elizabeth Lancaster  
and Simon Feasey**



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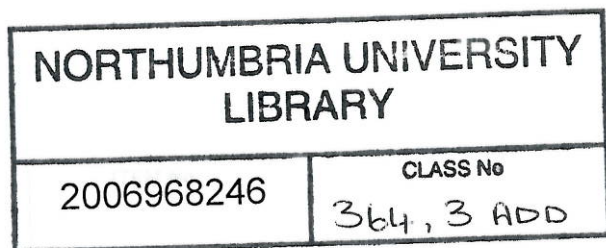
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## Chapter 22

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# Working with ethnic diversity

*Bankole Cole*

### Introduction

Available research evidence indicates that minority ethnic people in the UK are disproportionately represented in the crime figures and are more likely to be treated less favourably than their white counterparts in the criminal justice system. The evidence suggests that criminal justice decisions are sometimes influenced by racist stereotypes and prejudice (see Cook and Hudson 1993; Bowling and Phillips 2002). In addition, there is now a growing concern about discriminatory practice and unfair treatment of minority ethnic offenders post-sentence, for example in prisons, young offender institutions or while on community punishments (see, for example, Calverley *et al.* 2004).

This chapter considers how ethnic diversity is addressed in offender management. It will examine what evidence there is of a true understanding of 'race' issues in the current approaches to the assessment of criminogenic risks and needs. The chapter also explores whether the current approaches to working with minority ethnic offenders truly address the causes of black and minority ethnic offenders' offending behaviour. Discussions in the chapter will be centred on the following issues:

- the capacity of assessment tools to predict the criminogenic risks and needs of offenders from minority ethnic backgrounds;
- how well work with minority ethnic offenders is tailored to meet the needs and circumstances of minority ethnic offenders;
- the competence of practitioners working with offenders from minority ethnic backgrounds;
- the limitations of offender programmes in addressing the offending behaviour of minority ethnic offenders.

Since the Macpherson Report (1999) and the publication of the Race Relations Amendments Act 2000 there has been a considerable political move in the UK to address diversity issues in criminal justice. Current



New Labour criminal justice policies highlight the need for transparency and accountability in criminal justice in order to ensure that discriminatory practices are eliminated in the delivery of services to minority ethnic people. Examples include the introduction of effective monitoring through impact assessment of criminal justice activities and the setting up of public service agreement (PSA) targets on race in the criminal justice system (see, for example, Criminal Justice System 2005; National Probation Service 2003; HM Prison Service 2006). In addition, training in ethnic diversity has been introduced for criminal justice practitioners and it is expected that lessons learnt from such training are translated into effective practice.

This chapter argues that whereas significant changes are, indeed, taking place within the criminal justice system to address ethnic diversity in the treatment of offenders, work with minority ethnic offenders is still largely influenced by generalised concepts of 'risk' and 'needs'. Criminal justice interventions are not yet adequately responding to 'race' issues because a fundamental factor in minority ethnic offending – racism – is yet to be fully acknowledged in the assessment of minority ethnic offenders' offending behaviour and in the work done with these offenders. Assessment tools currently used by probation and prison officers significantly ignore racism as a criminogenic risk factor for minority ethnic people. While ethnic diversity is specified as an important issue in the delivery of offender programmes and in offender management generally, there is not much clarity on how this is to be achieved. At the level of professional practice, much is left to personal development and structured professional judgment (SPJ).

### Rule usage and ethnic diversity

Rules may be followed or not, they may or may not be complete, they may or may not be exact, definition may or may not have its own logic. Parsons suggests that rules *can* be followed, and provides us with units in which rules *might* be followed, but we are without a description of the way rules *are* followed. (McHugh 1968, cited in Carlen 1976: 3)

Organisational behaviour essentially involves the use of rules. In *Magistrates Justice*, Pat Carlen (1976) demonstrated how both abstract rules (legal and administrative rules) and situational rules (rules that people apply when they want to get things done or justify an action taken in the context of the abstract rules) can be manipulated to facilitate an appearance that justice is being done. Carlen described how, in the context of the routine operation of magistrates' courts, rule-governed behaviour is shaped by the nature of the abstract rules being applied, the competence and performance of the rule users themselves and the "accounting" procedures that they invoke as they 'antecedently, situationally and ex post facto attribute normative meaning to their actions' (Carlen 1976: 5).

Criminal justice practitioners are essentially workers who define their situation and justify their actions in terms of the official abstract rules that they are meant to apply. In this chapter, I define the abstract rules as all laws, administrative guidelines, assessment tools (for example OASys) and manuals that are used in post-sentence work with offenders both in prison and in the community. Whereas the rules identify ethnic diversity as an issue in offender management, there is no research evidence of how the rules are followed in practice. Evidence suggests that much is left to knowledge gained from training and experience. 'Experience' provides 'prior' knowledge upon which future decisions are based. According to Peter McHugh in *Defining the Situation* (1968):

The term 'prior' ... suggests that nothing much happens in the situation itself ... [The practitioner] comes to know he is in [the situation] automatically rather than having to decide he is in it, ... his prior attitudes and conceptions, his predispositions, are mechanically triggered into play. (McHugh 1968: 61)

The value of 'experience' in working with ethnic diversity is stressed in the following advice given by the Suffolk Probation Area to its staff:

There are no easy answers ... effective practice depends on workers' ability to think for themselves, drawing on their knowledge, values, skills and experience. That is what needs to be developed if anti-racist practice is to become a reality. It can only be achieved if the thinking and values dimension is prioritised rather than taken for granted or relegated to second place ... As workers we need to acquire and maintain awareness of our own cultural biases, values, feelings and attitudes and be prepared to continually review and challenge these. We need to check ourselves for conscious and unconscious prejudice and stereotyping to ensure this does not distort our practice. We need to develop our knowledge regarding the nature and impact of racism and oppression through reading, consulting research findings and, above all, listening to the minority ethnic offenders we supervise. (Suffolk Probation Area 2002: 3-4)

This statement recognises the importance of 'race' awareness in offender management but sees this as something that is the responsibility of the individual practitioner; that is, something for personal practice. It is a position that does not question the rules being applied but points to the need for practitioners to 'account' for their actions by reference to 'knowledge', 'experience' and 'personal development'. Because the rules are accepted, probation and prison officers are more likely to look for discriminatory practice or even racism in their own actions, not in the rules that they are applying.

It is not surprising therefore that the discussion of 'race' or ethnicity in criminal justice post-sentence has focused much more on the discriminatory



attitudes of prison and probation officers and how institutional practices and environments discriminate against minority ethnic offenders (for example, Muslim offenders in prison) than on the inadequacy of the rules being applied in addressing ethnic diversity issues. Whereas much literature exists on rule usage and discriminatory practice in criminal justice, from stop and search up to the point of sentence, not enough attention has been given to rule usage and 'race' issues post-sentence.

In this chapter, it is argued that the assessment tools used to determine the appropriate intervention (the abstract rules) and the interventions themselves do not fully address minority ethnic people's offending behaviour because the significant impact that 'racism' has on minority ethnic people's reoffending is yet to be fully acknowledged in these processes.

### **Ethnic diversity and reoffending**

Working with ethnic diversity implies having a definite understanding of what offending behaviour means in terms of ethnicity or 'race'. But there is no definite definition of 'offending behaviour'. It is a 'label' that is often imposed where a person displays a pattern of offending that raises a cause for concern about his or her future conduct. It is not a term that one expects would normally be used for a first offender, however serious the offence. The label does not only define the offender's lawbreaking behaviour but also assumes that the offender is the type who will most likely be in trouble again or reoffend, if the initial causes of offending are not addressed. In other words, the label presupposes that the offending is routine, not unusual and that there are fundamental reasons for this. Underlying the definition of offending behaviour, therefore, are, presumably, assumptions or theoretical perspectives about why people are likely to reoffend. One of the main aims of offender behaviour work is to reduce the risk of reoffending. Addressing offending behaviour in relation to ethnicity, therefore, centralises the questions of whether minority ethnic people's reoffending can be explained differently compared with that of the majority white population; if this is the case, should interventions be tailored to meet this difference and, if so, how should this be done? The central question here is: in terms of general reoffending, why do minority ethnic people reoffend?

Whereas it is acknowledged that minority ethnic offending can result from disproportionate exposure to prejudice, discrimination and social exclusion compounded by their 'race' (for example, the fact that minority ethnic offenders are more likely to experience criminogenic factors such as exclusion from school, unemployment, poverty and living in crime-infested areas), the popular official response has been that so would 'anybody' who shared the same experiences (see Bradshaw *et al.* 2004). Thus discriminatory treatment in society as a result of 'race' (racism) is recognised but not fully acknowledged as a factor in minority ethnic people's offending. Minority ethnic offenders are often seen as people who share similar characteristics

with most people in society who frequently offend. However, if it is accepted that the reasons for offending are often those that also trigger reoffending, then it is important to research how the common experience of racism affects minority ethnic people's reoffending.

More importantly, the question needs to be asked whether in the process of addressing the offending behaviour of minority ethnic offenders, some emphasis should be placed on the effect of racism as a criminogenic factor, in addition to other general, individual or personal reasons for reoffending, irrespective of ethnicity. The position of this chapter is that the effect of racism should be prioritised in the debate about minority ethnic people's reoffending because the risk of reoffending is high where one is confronted by racism even after the completion of a sentence (see Calverley *et al.* 2004; Cole and Wardak 2006).

### **Racialising criminogenic risks**

Factors that can trigger reoffending are often discussed under two headings: criminogenic risk factors and criminogenic needs factors (see Philips, this volume). Criminogenic risk factors, on the one hand, are the characteristics of an offender that indicate a probability that the offender may offend again or cause future harm to others or themselves. Criminogenic risk factors are regarded as permanent, static or unlikely to change over time. Often included are: offence history, type of offence, previous convictions, age at first conviction, breaches and pattern of offending. Since the introduction of National Standards in 1992, it has become mandatory for pre-sentence reports to contain a section on criminogenic risks.<sup>1</sup> Criminogenic need factors, on the other hand, are the circumstances of the offender, lifestyle, personal attitudes or behaviour that increase the likelihood of reoffending. Often referred to as 'dynamic' factors, they are believed to be susceptible to change in the sense that a positive change to them could reduce the chances of reoffending. Often included are: lack of education or training, unemployment, homelessness, peer pressure, illicit drug or alcohol misuse, relationship problems, poverty, emotional well-being or mental health problems, temperament, low self-esteem and attitude to others or towards offending. But not all 'needs' are criminogenic. In their definition of the 'needs principle' Andrews and Bonta (1998) drew attention to the need to distinguish between two types of 'needs' – criminogenic and non-criminogenic needs. Criminogenic needs are attributes of an offender that are directly linked with offending and which, if addressed, decrease the probability of reoffending. Non-criminogenic needs are also attributes of an offender that are dynamic but not necessarily associated with offending; therefore addressing them may not decrease the probability of recidivism (cf. Hannah-Moffat 2005: 39). The dilemma in post-sentence intervention lies in distinguishing between the 'needs' that are directly linked to offending and therefore in need of attention and those that are not. As Aubrey and



Hough (1997: 3, cited in Hannah-Moffat 2005: 39) simply put it: 'Should a probation officer try to address an offender's poverty or poor housing if these are unrelated to the probationer's offending?' Criminogenic risks and needs are often treated as interconnected but they are assessed separately in the process of predicting reoffending.

There have been some debates over whether criminogenic risk factors are the same for all offenders, irrespective of ethnicity. In her discussion of risk assessment of Canadian aboriginal offenders, Tanya Rugge (2006) concluded that research to date indicates that the majority of criminogenic risk factors are the same for both aboriginal and non-aboriginal offenders. She added that:

Research has also found that some of the more widely-recognized risk assessment instruments, such as the Statistical Information on Recidivism (SIR) scale ... and the Level of Service Inventory - Revised [LSI-R] ... are equally valid and predict recidivism equally well for male Aboriginal offenders, even though they were designed [and] based on a non-Aboriginal population. (Rugge 2006: i)

In addition, Rugge (2006) argued that the injustices that have been committed against many Aboriginal people and which have resulted in disadvantages (presumably also in offending) should not play a role in risk assessment. According to her, 'the goal of risk prediction is to predict not explain' (Rugge 2006: iv).

This position is counteracted by a growing body of sound arguments on the need for culturally-specific and gender-specific risk factors. Simon has argued (1987, 1988, 1994, cited in Hannah-Moffat 1999) that definitions and interpretations of what constitute 'risks' are contingent upon specific cultural, political and moral evaluations of behaviours and events. This is echoed in Baker and Simon (2002, cited in Hannah-Moffat 2005: 38) where it is argued that what is a risk differs across time and space, not according to an objective scientific process, but rather according to the logic and influence of institutions. Hannah-Moffat concluded that the concept of risk is indeed 'ambiguous, fractured and flexible' (Hannah-Moffat 1999: 71).

With regard to gender, Shaw and Hannah-Moffat (2000, 2004) have argued that risk assessment tools do undermine gender differences as they are often validated on white male adult and young offender populations. It has been argued that many of the factors that predict risk for men are invalid for women (Farr 2000, cited in Shaw and Hannah-Moffat 2000: 166). In the UK, Hedderman (2004) assessed the available evidence and concluded that programmes which focus on male criminogenic factors are unlikely to be as effective in reducing reconviction among female offenders as they are for men. Canada has recognised the need to develop 'gender-sensitive' or 'women-specific' assessment tools which adequately reflect the experiences of women and respond to the gender-specific causes of women's crimes. This is a step in the right direction in the sense that it acknowledges the

fact that female offenders have a different range or types of problems that contribute to their criminal behaviour than do men (see Hannah-Moffat 1999; Shaw and Hannah-Moffat 2000). In the UK, risk assessment tools are also 'gendered' in the sense that some risk assessment tools are classified as not applicable to women. These are mainly assessment tools used for assessing sexual violence (see Risk Management Authority Scotland 2006).

No such recognition exists for ethnicity in risk assessment in the UK. As Hudson and Bramhall (2005) noted, there is a 'lack of attention to race in risk studies and to risk in race studies' (2005: 723). This is unlike other countries with similar diverse ethnic populations. For example, in Australia, research has shown that a risk assessment instrument developed specifically for indigenous offenders can be more accurate than instruments that were developed to assess the risk of general recidivism (Allan and Dawson 2004). Similarly, in Canada, it has been suggested that risk instruments should take account of the life experiences of black and minority people, for example their colonial history and experiences of racism and discrimination (see Shaw and Hannah-Moffat 2000). Anne Worrall has argued that instruments and methods developed for the 'general population' are not necessarily appropriate for all cultures and indigenous groups (see Worrall 2000). The assessment of criminogenic risk factors for minority ethnic offenders must prioritise factors that affect their offending and reoffending as a distinct offender category.

The position of this chapter is that criminogenic risk factors are not the same for all ethnic groups. Risk assessment instruments must acknowledge ethnic diversity. This means that life experiences that are peculiar to minority ethnic offenders because of their ethnicity or 'race' and known to be specifically related to their offending must be acknowledged in the assessment of their risk of reoffending. The current approach to criminogenic risk assessment is far too rigid. If a particular situation explains a behaviour then it also predicts that behaviour. The experience of racism explains and predicts minority ethnic people's offending and reoffending. In this regard it is important that the experience of racism is acknowledged as a criminogenic risk factor for minority ethnic people and included in the list of criminogenic risk factors for such offenders.

Racism as a criminogenic risk factor for minority ethnic people can be viewed at two levels: first, at the level of the fact that minority ethnic people are more likely to be at risk of being victims of racially motivated crime (see Gill and Marshall 1993; Dixon 2002, cited in Smith 2006); secondly, at the level of the fact that racism is, sadly, a static and permanent condition in the life experiences of minority ethnic people. Both arguments have implications for 'race' issues in addressing offending behaviour. On the one hand, it is relevant in terms of the 'treatment' of the racist (presumably white) offender whose racist behaviour needs challenging in the process of addressing his or her offending behaviour and, on the other, in terms of the minority ethnic offender whose chances of not reoffending are narrowed by the continuous experience of racism in the wider society, after the



completion of sentence. This may not be a new argument but it needs to be emphasised. The fact that racism does not disappear after the completion of sentence means that it cannot be ignored in the understanding of minority ethnic people's risk of reoffending. In spite of this fact, racism is yet to be recognised as a variable in criminogenic risk assessment tools in the UK.

The Offender Assessment System (OASys) is the main standardised assessment tool used by probation and prison officers in the UK to assess criminogenic risks and needs of offenders (that is, the risk of reoffending). OASys is classified as a tool for general application (Risk Management Authority Scotland 2006).<sup>2</sup> It is scored and is also based on structured professional judgment. SPJ means that some of the decisions in OASys are based on 'the training and experience of assessors to evaluate factors being assessed' (Risk Management Authority Scotland 2006: 81).

Over a hundred sections and subsections exist in the OASys forms but not a single one relates to how the offender's own experience of racism or racial discrimination may have contributed to their offending or reoffending, despite the fact that studies in the UK have shown that the most frequent form of explanation offered to account for offending by black offenders, for example, is racism (Denney 1992: ch. 2; Calverley *et al.* 2004; see also Bhui 1999: 173, where the author categorised racism and discrimination among what he called the external precursors of offending). As far back as 1989, Green had raised the issue, in relation to probation service practice, of how the racist context in which the offending behaviour of Black and minority ethnic people took place is ignored in the report to the courts and in criminal justice response to their offending behaviour (cf. Gelsthorpe 2006). Because the rules do not stipulate that the ethnicity of the offender matters in the assessment of risks of re-offending, then much depends on SPJ with regard to how ethnicity is to be taken into consideration in such an assessment.

Studies on risk assessments indicate that minority ethnic offenders are, however, assessed differently. In a study of risk assessments by probation officers, Hudson and Bramhall (2005) found that pre-sentence reports on Asian offenders tended to be 'thinner'. They found that Asian offenders are more likely than their white counterparts to be recorded as reckless/irresponsible, and more likely to deny responsibility for the offence and have mental problems (Hudson and Bramhall 2005: 729). The authors noted that 'distancing language' was used in the pre-sentence reports of Asian offenders whereas the language in the pre-sentence reports of their white counterparts revealed that a process of negotiation had taken place and a mutually accepted position reached. The fact that failure or refusal to accept responsibility for an offence may be due to the offender's belief that the offence was racially provoked was not acknowledged by the report writers. The result was that the Asian offender's offending behaviour is more likely to be linked to lifestyle and personality factors in which case they are less likely to be recommended for community supervision than their white counterparts (Hudson and Bramhall 2005: 731). Furthermore, the authors

noted that while for white offenders, employment, family and associates were problems of absence, for Asian offenders, they were problems of presence (Hudson and Bramhall 2005: 731). The authors showed how the same boxes can be ticked for different reasons and how the problems associated with offending are linked to popular stereotypes. The authors concluded:

The Asian offender's criminality is less likely than the white offender to be constituted as due to adverse circumstances, but is seen as arising from his own character: he may be less dangerous than his white counterpart, but he is certainly constructed as more blameworthy. Moreover, his family and his community are implicated in this blameworthiness. (Hudson and Bramhall 2005: 732)

The above assessments are obviously racist and they stem from the fact that much is left to SPJ in risk assessment. In a situation like this, practitioners with prejudices can satisfy themselves with impunity, knowing that their professional judgments will most likely not be questioned.

There is already an established position that assessment tools are not adequate in measuring risks. The attempt here is not simply to argue for or against risk assessments. Of that, much has already been written. The argument is that the variables upon which risk of future offending is based exclude a fundamental variable for minority ethnic offenders – the experience of racism in society. The argument in support of the current 'standardised' approach to risk assessment is that it eliminates subjectivity and reduces bias and prejudice, and that the method is apparently morally neutral and 'scientific' (see Douglas 1992). The reality proves otherwise. As Hudson and Bramhall (2005: 738) argued, risk is the contemporary language of stigma. The current approach 'places greater emphasis on individual pathology than on contextual and institutional factors in explaining events and behaviour' (Shaw and Hannah Moffat 2000: 169).

Of course, 'race' or ethnicity is not a predictor of offending behaviour but it is relevant where racism is added to the causes of offending behaviour. However, it may be argued that if racism is added to minority ethnic offenders' risk factors, it may, on the one hand, increase their risk scores. On the other hand, it may highlight the need to take ethnic diversity seriously in the planning of interventions. There is also the issue of what a risk assessment instrument for minority ethnic offenders should look like and whether a risk assessment tool developed for minority ethnic people could be used for all minority offenders, irrespective of the differences between the groups. Moreover, there are issues around whether this assessment should translate into similar intervention programmes or distinctions should be made between specific sub-groups. This chapter's position is that the acknowledgment of racism as a risk factor for minority ethnic offenders should lead to a more sympathetic attitude towards minority ethnic offending and how their offending behaviour is dealt with.



## Ethnic diversity and criminogenic needs

Offender behaviour work is mainly about addressing criminogenic needs. It is therefore necessary, in the context of ethnic diversity, to ask what part the ethnicity of the offender should play in the assessment of needs. The evidence in the UK suggests that a person's ethnicity is not normally taken into consideration in needs assessment (see Calverley *et al.* 2004). In OASys, ethnicity and gender are to be regarded as factors that are not 'implicitly criminogenic' (Howard *et al.* 2006: 3). In OASys, criminogenic needs are defined, generally, in terms of the thoughts, behaviour and circumstances leading up to the offence and the offender's motivation to address their offending behaviour.

OASys is used for all offenders irrespective of ethnicity or gender. This is unlike other countries where there are specific criminogenic needs assessment tools for minority ethnic offenders. In New Zealand, for example, the Māori Culture Related Needs Assessment (MaCRNs) is an assessment tool used to assess the criminogenic needs of Māori offenders in relation to their offence. The MaCRNs is meant to identify cultural factors that may, if addressed, encourage the offender to address their criminogenic needs. The MaCRNs is the cultural component of the generic assessment tool used for all offenders who have a higher risk of reconviction and imprisonment, the Criminogenic Needs Inventory (CNI). The CNI operates on the same principle as the OASys – it is designed to identify the criminogenic (or crime-producing) needs of the offender by exploring the thoughts and behaviour leading up to the offence, and assesses the offender's motivation to address that offending behaviour. In addition, the MaCRN explores whether an obvious cultural dimension exists to the offender's criminogenic behaviour. This cultural dimension may be represented by a lack of connection with, misunderstanding about or negative perception of traditional concepts, values and beliefs. The MaCRNs assessment is aimed to better target Māori specific rehabilitation resources by identifying those Māori offenders for whom an improved understanding of Māori cultural concepts, values and beliefs may be of most benefit. It rests on the belief that understanding cultural dimensions, or cultural needs may explain the offending behaviour of some Māori and, if addressed by the right cultural intervention, may increase the offender's motivation to address their criminogenic behaviour and reduce the risk of reoffending (cf. State Services Commission, New Zealand 2005).

OASys also expects that practitioners take 'cultural' issues into consideration when assessing or working with offenders. The OASys Manual enjoins probation and prison officers to take into account cultural diversity issues that may affect the assessment when interviewing offenders, gathering and evaluating offence-related information or making a decision on placement (Home Office 2001: 22). In particular, practitioners are expected to be aware of offenders' attitudes or behaviour that may have been influenced or can

be explained by culture, for example in the offending-related categories of relationships, lifestyle and associates, and emotional well-being (Home Office 2001: chs. 3 and 6). In addition, with regard to placements, the Manual asks practitioners to be aware of religious or cultural issues that may place limitations on suitability and availability for community punishment, electronic monitoring and programmes (Home Office 2001: 113). Moreover, practitioners are expected to take account of traditions within the offender's community when making an assessment (Home Office 2001: 67). But, most importantly, the Manual stated that scoring in this regard should be based on the assessor's analysis of the situation (Home Office 2001: 67).

Whereas the above OASys provisions could be taken to imply that OASys does recognise the need to consider 'cultural' factors when making decisions on criminogenic needs and placements, in reality OASys is quite vague on how this to be done. The result is that much is left, again, to SPJ and situational rules. In fact, the main bulk of OASys questions require SPJ. In a recent Home Office study of black and Asian offenders on probation, Calverley *et al.* (2004) found that black and Asian offenders with lower criminogenic needs were placed on similar orders as their white counterparts with higher criminogenic needs. Where the abstract rules are vague or unclear, discriminatory practice is encouraged.

### **Ethnic diversity and the delivery of offender programmes**

There have been long-standing concerns about the 'relevance' of offender programmes to the offending behaviour of black and minority ethnic offenders. The debates have been around the differential delivery of services and how the 'effective practice' principle is being applied to such offenders (see Williams 2006). McGuire (2002) has argued that offender interventions should attempt to accommodate variations in ethnicity and focus on the adaptation of materials to meet the needs and cultural differences of offenders. However, in the light of the diverse nature of the minority ethnic population in the UK offender population, the question could be asked as to how much emphasis should be placed on the differences between the sub-groups? Ideally, an approach to offending behaviour that truly respects ethnic diversity cannot be seen to be relevant to one ethnic sub-group and not another.

Ethnic diversity in programme delivery is often discussed in terms of two concepts: accessibility and responsivity. Accessibility implies making sure that mainstream accredited programmes are equally accessible to minority ethnic offenders and are acceptable and effective in use with this group of offenders. Responsivity refers to the delivery of programmes or interventions in a manner that is compatible with each offender's ability, style of learning and intervention needs.



## Accessibility

Accessibility implies ensuring that all offenders, irrespective of their ethnicity, should be given the choice and opportunity to access programmes or services that are suited to them. This position is emphasised in the Probation Service policy document, *A New Choreography: An Integrated Strategy for the National Probation Service for England and Wales*, as follows:

Inclusiveness, equality and fairness ... No one should be excluded from ... our services because of gender, race, ethnicity, religious beliefs, disability or sexual orientation. (National Probation Service and Home Office Communications Directorate 2001: 2–3)

However, the selection criteria for mainstream accredited programmes are not determined by 'race', ethnicity or gender but by the criminogenic needs of offenders and their suitability for particular programmes, and programme integrity is defined in terms of how the programme is equally effective with all suitable offenders regardless of background. The 'concept' of accessibility simply implies that certain offenders are better placed in certain groups for work with them to be most effective. With regard to minority ethnic offenders, accessibility is often approached in two ways. Firstly, minority ethnic offenders are given the choice of participation in single- or mixed- 'race' groups and efforts are made to ensure that staff who handle these groups are adequately trained in diversity issues or skilled in working with offenders from culturally diverse backgrounds and/or are of similar ethnic origins as the offenders themselves (see National Probation Service and HM Prison Service 2002; HMI Probation 2006; Calverley *et al.* 2004). Secondly, minority ethnic offenders are given the opportunity or choice to access programmes designed specifically for minority ethnic offenders. In a Home Office review of programmes for black and Asian offenders on probation, Powis and Walmsley (2002) identified 13 programmes that had been developed in ten probation services specifically to target black and Asian offenders, five of which were running at the time of their study, the remainder being no longer offered to offenders. Four distinct types of programme were identified:

- 1 Black empowerment programmes
- 2 Black empowerment within general offending programmes
- 3 Black empowerment and reintegration programmes
- 4 Offence-specific programmes (for example, Asian drink driving programme; Asian domestic violence programme). (Cf. Powis and Walmsley 2002: iv)

What is strategic is the revelation that even though these programmes were based on a range of theoretical models, they all used cognitive-behavioural approaches. In addition, most of them were available only to men (Powis

and Walmsley 2002; see also Hedderman 2004). Moreover, only a very few probation areas have these programmes although this is not a problem as offenders could attend the programmes in neighbouring probation areas. It should be noted that the Prison Service does not run offender behaviour programmes for minority ethnic offenders. All the nine offender behaviour programmes currently run by Her Majesty's Prisons are mainstream offender behaviour programmes delivered to all prisoners irrespective of ethnicity. This is a significant error considering the fact that black and minority ethnic people are more likely to be sent to prison for their crimes (Cook and Hudson 1993; Bowling and Phillips 2002; Ministry of Justice 2007).

There is still lack of clarity about how ethnicity is to be dealt with in the delivery of programmes. Durrance and Williams (2003: 211) talked about programme materials which 'might better engage Black and Asian offenders and others who may find it difficult to relate to more established problem-solving approaches'. Williams (2006) further argued, in relation to probation, that there is little that the Probation Service can do to change the social environments within which offenders live. Therefore the only way that the Probation Service can help minority ethnic offenders is to 'assist them through the exploration of self-identity and self-conceptualisation to change their views about the choices available within those environments' (Williams 2006: 149). Powis and Walmsley's review (2002) indicates some considerable support for the 'empowerment' approach to the delivery of programmes to black offenders but the central theme in the 'empowerment' approach is that:

The individual must ... be provided with an opportunity to identify strategies for coping with events that influence his/her lifestyle but for which he/she does not have ultimate control for change. (Duff 2002: 10, cited in Williams 2006: 151)

It is doubtful whether these perceptions truly address the needs and circumstances of minority ethnic offenders. A term like 'empowerment' is politically sexy as it implies increasing strength and building confidence, but as the following observation from a Joseph Rowntree Foundation study of mentoring of disaffected young people based on an empowerment model showed, there is still some confusion about what it means in practice:

While project staff ... talked of role models and of increasing self-esteem and of empowering young people, there was no clear sense of how the young people were expected to change. (Shiner *et al.* 2004: 48)

Other countries have also experimented with providing programmes that are designed specifically for minority ethnic offenders, especially those incarcerated in prisons, and with much success. In Canada, for example, there are culturally based programmes and services for Inuit and Métis offenders



in correctional institutions. Culturally based programmes are programmes which are culturally responsive to or specifically targeted at the specific cultural characteristics, needs and home environment of minority ethnic offenders. Research findings in Canada indicate that such programmes are more beneficial for minority ethnic offenders in reducing reoffending than mainstream offender programmes (Trevethan *et al.* 2003, 2004; Moore *et al.* 2004). Similarly, in New Zealand, an evaluation of culturally based programmes for Māori offenders shows that 'Māori offenders who have discovered or re-connected with their culture have improved pro-social behaviour and are more motivated to address the underlying causes of their offending' (State Services Commission, New Zealand 2005: 2).

It is unclear whether this implies that programmes which 'revive' cultural values are more likely to be successful in reducing reoffending. In New Zealand, the conclusion reached was that there was insufficient evidence to show that culturally based programmes on their own were effective in changing offending behaviours. More success was achieved where culturally based programmes were used to complement proven mainstream treatment processes (State Services Commission New Zealand 2005). Moreover, in another Canadian study, Dell and Boe (2000) warned against over-emphasising the ethnicity element in the provision of services. Such an attempt assumes that similarities between individuals 'arise more from racial experience than from shared common life histories' (Dell and Boe 2000: iii). Dell and Boe continued:

Criminological research that forefronts offender race may also need to account for individual life histories, acknowledging potential similarities across racial groupings. Individuals differ due to their racialized experiences but they also resemble one another due to common life experiences. The overall implication is that caution must be exercised in focusing research exclusively on race. With the current trend in research focusing on cultural heterogeneity, the lack of attention to similarity across racial categories may result in overlooking or minimizing elements of individual shared life histories that may contribute to understanding and identifying criminogenic factors (risk and needs). (Dell and Boe 2004: iv)

Dell and Boe (2004) are simply alerting practitioners to the need to balance both the racial and individual (general) factors in offender management. However, there is the tendency, in practice, to overemphasise the 'similarities across racial categories' and undermine the 'racialized experiences'. Dell and Boe have simply emphasised the confusion that still exists over how ethnicity diversity is to be addressed in offender management.

## Responsivity

The responsivity principle refers to the delivery of offender interventions in a manner that is compatible with each offender's criminogenic needs, individual or personal characteristics, abilities and learning styles, within an environment that is conducive to effective learning (see Andrews and Bonta 1998). In other words, responsivity factors are those characteristics of an offender and the intervention environment that could either interfere with or facilitate engagement with the offender or affect the successful delivery of offender programmes. The concept is based on a recognition of the fact that offender characteristics and programme environment are important in offender management.

The responsivity principle is usually discussed under two headings: general and specific responsivity (Andrews and Hoge 1995). On the one hand, general responsivity is about 'what works' best with offenders. The most common approach to general responsivity is the adoption of cognitive-behavioural methods in the delivery of correctional programmes. This approach is thought to be the best suited for addressing the factors that underlie criminal behaviour such as anxiety, low self-esteem, interpersonal and cognitive immaturity, psychopathy, inadequate problem-solving skills and low verbal intelligence. Intervention should address the risk of reoffending by targeting these criminogenic needs. It should also focus on skills building and social learning. The programme should, preferably, be located in the offender's natural setting and be delivered in such a way as to motivate the offender to participate and provide optimal conditions for learning. Specific responsivity, on the other hand, relates to the need for programmes to be delivered in ways that match the personal characteristics of individual offenders. Characteristics associated with specific responsivity include: race, gender, age, social background, life experiences, disability and learning style (see Kennedy 1999; Crime and Justice Institute 2006). According to Dana (1993, cited in Crime and Justice Institute 2006: 15), failure to address specific responsivity factors may contribute to inaccurate assessment of the motivation or readiness of individuals referred to treatment, not to mention inaccurate assessment of criminogenic needs.

Responsivity is also discussed under the headings of 'internal' and 'external' responsivity. On the one hand, internal responsivity refers to the offence and offender characteristics discussed above. External responsivity, on the other hand, refers to the characteristics of programme settings and of the practitioners or service providers themselves – their training, attitudes, behaviour and perceptions – that may hinder or facilitate learning or engagement with the offender (Kennedy 1999). In other words, external responsivity relates to the provision of the optimal conditions or environment under which offenders are motivated and willing to learn. The concept recognises the fact that certain offenders may perform better in certain treatment settings, or certain staff members may be better able to work with certain offenders than other staff members (see Sperber 2003).



Available research evidence in the USA suggests that general offender populations respond differentially to various correctional environments and that personality type (of both treatment providers and clients) could affect treatment outcome. Research in the USA and Canada has shown that correctional treatment programmes that match offenders to treatment modalities based on the responsivity principles are more successful than those that treat offenders as if they are all alike. Research in those countries has also shown that when offenders are matched to treatment based on their individual characteristics, they perform better and that programmes that address responsivity issues have better outcomes for clients or service users (see Sperber 2003 for a review of these research findings).

Furthermore, in the USA, there are classification instruments that could be used to categorise offenders according to the principles of responsivity. An example is the Jesness Inventory. This assessment tool could be used to guide practitioners in their efforts to individualise treatment by matching the offender to treatment setting, style and staff, thereby providing a more effective treatment for the offenders. Sperber (2003) argued that programmes that assess responsivity with standardised reliable and valid assessment tools can better match clients to therapist and setting characteristics, thereby improving treatment outcomes.

Although OASys recognises the need to take cultural and individual characteristics into consideration while assessing criminogenic needs and in sentence planning generally, it is not strictly a responsivity classification assessment tool. However, offender programmes in the UK are mostly based on the principles of general responsivity, supported by the 'What Works' agenda. Specific responsivity is also addressed in policy documents and programme manuals and is highlighted as an important element of effective professional practice in professional training manuals. For example, the Diversity Review Report on Cognitive Skills Programmes (National Probation Service and HM Prison Service 2002) recommended that diversity reviews should be considered for all accredited programmes and that responsivity and diversity should be an integral part of programme design and delivery.

With regard to specific responsivity, two approaches appear to be commonly used – but only by the Probation Service, in the attempt to achieve specific responsivity in relation to minority ethnic offenders on offender programmes. First, is the validation of mainstream accredited programmes for minority ethnic offenders. A good example is the Think First Black and Asian Offender Programme (TFBAO) run by the Greater Manchester Probation Area. The aim of this programme is to offer black and Asian offenders the opportunity to undertake offence-focused group work from their own perspective. The second approach is the use of cultural examples during the delivery of mainstream offender programmes to mixed groups, for example in the form of role-plays. Practitioners who deliver these programmes are trained (see De Montfort University 2006), but there is still a query over how knowledge gained from training is translated into effective practice. In a Skills for Justice report it is noted that:

In HMI Probation's report, *A Joint Inspection of Community Penalties 2005*, it was found that many staff from different agencies have received training in valuing diversity or anti-discrimination. However, staff are not yet able to relate the generic training received to specific situations which might occur during the enforcement of community penalties. This is coupled with a lack of organisational guidance about such matters. (Skills for Justice 2007: 413)

However, studies have continued to show that minority ethnic offenders perform better in particular programme settings, and especially where the programmes are delivered by people who understand them as a distinct category of offenders and are, preferably, from the same ethnic background as themselves (see Calverley *et al.* 2004; 2006).

### **NOMS, ethnic diversity and the voluntary and community sector**

The passing of the Offender Management Act 2007 implies that more services for offenders may be contracted out to the voluntary and community sector. The value of this sector to offender management is acknowledged in NOMS' newly formed 'faith, voluntary and community alliance structure'. In this set-up, faith groups and voluntary and community organisations are regarded as valuable partners in the tasks of tackling offender behaviour, addressing criminogenic needs and providing services geared to reducing reoffending both in the community and in prisons (see Home Office 2005b, 2006). The voluntary sector has long been a valuable arm in the provision of grass roots services that meet the needs of particular offender populations. They have provided specialist services often geared towards specific criminogenic needs such as drug treatment, employment and mentoring schemes targeted at offenders in particular communities.

However, while the law expects equal participation of the voluntary and community sector in offender management, it is clear that the introduction of the criteria of commissioning and contestability into the relationship with NOMS implies that strategic 'barriers' have been set against this relationship. Experience in the business sector has shown that commissioning and contestability do not favour small organisations. Large organisations and those who can provide 'broad' services in a 'cost-effective' manner because they already have the experience and structures in place to deliver to government 'contracts' are more likely to be successful in bidding for funding than smaller organisations, no matter how relevant or innovative the ideas of the smaller organisations might be. There is no such thing as a fair and transparent market, competitive neutrality or a 'level playing field'. It is all market-driven politics (cf. Leys 2003). Favoured organisations are more likely to be national while local organisations are either taken over or squeezed out. Organisations that are focused exclusively on providing for black and minority ethnic offenders' criminogenic needs are most likely to be



local and small. They cannot compete with larger organisations who claim to be able to provide for 'all types' of offenders. In larger organisations, minority ethnic offenders are simply numbers; even in organisations where they are in the majority, they are more likely to be treated as their white counterparts who are in the minority. Commissioning involves 'deciding what services are needed and in what form, and contracting for their delivery' (Home Office 2005c). This means that organisations have to work to 'contracts' imposed by NOMS over which they have no power. Terms such as a long history or experience of working with offenders will be used to marginalise smaller organisations that are attempting to address issues relating, perhaps specifically, to minority ethnic groups and their offending behaviour and are located within minority ethnic communities but do not have a history of offender work behind them. So, services will eventually be transferred to a handful of large organisations – 'the same old crowd'. The result is that valuable services necessary in addressing offending behaviour that are contracted out, such as basic skills education, employment schemes and drug rehabilitation and treatment, are more likely not to be contracted out with specific interest in ethnic diversity but according to the economic criteria of cost-effectiveness or cost-benefits.

Voluntary and community organisations that are rooted in the community are more likely to understand the 'local' offender population better than national organisations which may have a presence in the local community but are trying to apply a strategy devised at a regional or national level. Work with minority ethnic offenders is more likely to be tailored to meet their needs and circumstances if delivered by organisations that are set up by and rooted in minority ethnic communities and staffed by people from the same ethnic background as the offender population that they deal with. The emphasis here is that the initiative for who delivers offender programmes should come from the local community, not the state.

## Conclusion

The offender management approach introduced by NOMS implies that services are individualised and 'capable of adapting to the diverse needs, risks and circumstances of individual offenders' (NOMS 2006: 12). Ethnic diversity is referred to extensively in policy documents of both NOMS and its constituent criminal justice agencies. This, no doubt, is the result of the recommendations of the Macpherson Report and the passing of the Race Relations (Amendment) Act 2000. The probation and prison establishments both have race equality and anti-racist policies in place to ensure the elimination of unlawful discrimination and guarantee equal treatment of all offenders, clients and service users, irrespective of 'race'. These include carrying out an impact assessment of action plans and ethnic monitoring of staff, offenders and victims (see, for example, Home Office 2004, 2005a), providing staff training in race awareness and cultural diversity, and

having mechanisms in place to ensure transparency, accountability and the minimisation of discriminatory practices so that services provided are seen to be fair by offenders of all ethnic groups.

However, NOMS appears to have taken over the role of the prime initiator of change and a top-down approach seems have taken root in the delivery of initiatives and ideas. This is a common side effect of centralisation. In the process of NOMS taking shape, Bhui (2006: 171) has argued that 'there is a danger that some critical areas of knowledge and practice will fail to develop' and that 'anti-racist practice is proving to be one of those areas'. Unless the drive to provide a fair and anti-racist service comes from within the constituent organisations themselves and is flexible and strong enough to resist political pressures, criminal justice initiatives for offenders will continue to be driven by the government's definitions of reality. In the current climate of performance culture, the strength to oppose the government's directives is quite low.

In a nutshell, there is ample development on the policy front but this is yet to be fully translated into effective practice. The discretionary power of professionals is not challenged. The abstract rules do not specifically respect ethnic diversity. We are left with practitioners who define their situation in terms of 'experience', situational rules and SPJ. We are yet to know whether training in ethnic diversity adequately prepares practitioners for dealing with diversity issues when working with offenders of minority ethnic backgrounds. There appears to be some confusion over how to address the criminogenic needs of minority ethnic offenders and how they should be viewed as offenders. While there is support for specific responsivity, its application in the delivery of programmes to minority ethnic offenders is yet to be evaluated. There is a strong need to look again at staffing. The research evidence that the employment of more black and minority ethnic staff is important to the effective delivery of programmes to minority ethnic offenders should not be ignored. However, this is not simply about numbers; it is about how minority ethnic staff are utilised at various levels of decision-making where ethnic diversity issues are being debated and relevant policies formulated. Offender programmes must address the root causes of minority ethnic offenders' reoffending. Even though shared common life histories are important in assessing criminogenic needs, the starting point for minority ethnic offenders should be the recognition of racism as a criminogenic risk factor.

Working with ethnicity in offender management cannot really begin unless and until the differences between ethnic groups in terms of their differential risk of reoffending is recognised. If racism is not adequately targeted as a major factor resulting in the offending behaviour of minority ethnic offenders then it means that the criminal justice system is not ready to deal with the disproportionate offending of black and minority ethnic people. Why wouldn't the disproportionate representation of minority ethnic people in crime continue if a major cause of their offending is not recognised by those who claim to be addressing their offending behaviour?



While a lot is being done to create a non-discriminatory environment and promote non-discriminatory practices, the intervention tools and approaches are yet to fully reflect the needs and circumstances of minority ethnic offenders. Creating a non-discriminatory environment and addressing ethnic diversity issues are not entirely the same.

### Discussion questions

- 1 Should ethnicity be important in the assessment of criminogenic risks? What would be the implication for sentence planning?
- 2 How would you deal with a situation where an offender insists that his or her offending behaviour is due to racism in society? Would you consider this a barrier to successful engagement with the offender?
- 3 Is there a solid case for culturally based programmes for minority ethnic offenders on supervision and in prison? Give reasons for your answer.

### Further reading

- Bowling, B. and Phillips, C. (2002) *Racism, Crime and Justice*. London: Longman. This book provides an excellent background on issues of race and racism within the criminal justice system
- Denney, D. (1992) *Racism and Anti-Racism in Probation*. London: Routledge. This is a classic text. Although written on probation, the book highlights issues that are relevant to other agencies.
- Hannah-Moffat, K. (2005) 'Criminogenic needs and the transformative risk subject', *Punishment and Society*, 7 (1): 29–51. This is an excellent paper on the relationship between 'risks' and 'needs'. It provides a sound theoretical perspective to this controversial area of offender management, relevant also to issues of ethnic diversity.
- Lewis, S. et al. (2006) *Race and Probation*. Cullompton: Willan. This is the most recent and up-to-date collection on race issues. It focuses on probation but also covers wider areas and issues on working with ethnic diversity.

### Notes

- 1 Criminogenic risk is discussed in this chapter in the context of the risk of future offending in the general sense, not in terms of the risk of future harm (RoH).
- 2 OAsys was not validated in Scotland and was partially validated in the UK. It is used throughout the National Offender Management Service in England and Wales.

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